

LAKE COUNTY PLANNING AND ZONING COMMISSION
January 17, 2018
Lake County Courthouse
Rm 317, Environmental Health/Planning Conference Room
Meeting Minutes

MEMBERS PRESENT: Paula Holle, Diana Luke, Dick Goldsmith, Bill Barron, Gale Decker, Dave Stipe

STAFF PRESENT: Jacob Feistner, Rob Edington, Tiffani Murphy, Lita Fonda

Dave Stipe, Chair, called the meeting to order at 3:00 pm.

MC ELWAIN VARIANCES—KINGS POINT (3:00 pm)

Tiffani Murphy presented the staff report. (See attachments to minutes in the January 2018 meeting file for staff report.)

Dick asked for clarification regarding how the County boulevard strip affected where you could build on the lot. Dave explained that villa sites were platted like towns were, with lots and streets so the lots didn't extend to the middle of the streets. When the villas were platted, they had strips for the back villa sites to access the lake and a strip along the front that was platted to the public, not with the lots. The County owned those, was their contention. Encroachment on the villa site meant that people built their improvements outside of their property lines. The piece they owned was described. A lot of realtors told them they owned to the lake. There was no legal standing for the lot owners to have any [inaudible] ownership of that than the next lot owner. That was not part of the lot that they've ever owned. Some really disagree with that.

Bill said the clear point as far as who owned the boulevard was that the landowner didn't. His land was clearly defined. He referred to attachment 1 where the darkened line showed the property boundaries. The boulevard strip was clearly outside of the property. Dave added that it got complicated since often in these reports they referred to it as 'too close to the setback' where it was completely off the property. The same [thing happened] when they turned in a dock permit or a shoreline permit.

For buildings built on this boulevard, Dick asked if they paid taxes. Dave replied they paid taxes on the building. For the land, they paid taxes where the dark line was. The taxes were no cheaper on this land than on a piece of land that went to the lake. They were still taxed as the one closest to the lake. Bill explained this was called 'lake-influenced' and was the same tax rate as lakefront. Dave described that as with other property you didn't own, you could build a house on it but you didn't really own the house on it. Technically some other entity owned that property. Dick checked that it was pretty well determined this would never be used as a road. Was that the original intention? Dave didn't think so. He thought it was more along the lines of villas as Italian, Swiss and French villas, where the town was next to the lake or ocean. You owned the lot in the town but you didn't automatically own the lakeshore and everybody could use the lakeshore. The ocean was the same way in a lot of California. Gale said there was some

historical reference to those being used for cars so people could access the shoreline, and also for steamboats and their needs. Part of the purpose behind them appeared to be commercially related so people could [pursue] commerce on the lake using boats yet be able to access the shoreline. Dick asked if this worked like the stream access law, where you could walk up to the high water mark. Dave said it was a little different although you could make the argument that everybody lived along here or any other public that accessed that strip legally or pulled their boat up could walk along it. Gale said it was public land but owned by the County. Dave said it might be litigated at some point. It was clear that it would be tricky to extend these lines if you said the land owners did own them. What happened to the ones on pentagon-shaped lot, especially if docks were involved?

Gale turned to #7 on pg. 10. This was a new item that they'd started to include in these. [The Commissioner's] intention eventually was to offer these properties for lease. If that time came, the owner of this property [with this condition] would waive the right to protest a future lease agreement. Bill clarified that they were trying to give the landowners control over the land. It would still belong to the County but through the lease, [the landowner] would control it. Somebody [presently] could pull up on a boat and get out and have a picnic. The landowner would have no control over being able to tell them to leave. [The Commissioners] were trying to clear up these issues. They had places all over that had buildings on the villa sites and strips and boulevards. They were trying to rectify that issue. They hoped to do something like a 10-year lease with a 10-year renewal. Dave said they had to talk to a surveyor about how to address the lines. [The properties] would have to be described to be leased. It would make more sense to hire a surveyor to do a whole villa site than to make people get it surveyed one lot at a time. There were hundreds that had improvements, from a fire pit or pump house up. There were tens of dozens with parts of a house on it, and some where more of the house was on the villa strip than off of it. Bill said it was a huge problem and they were trying to find an answer. Dave said it was the can that had been kicked down the road for over 100 years. Bill noted the only way to be fair was that it was going to have to be a long-term solution. Dave said at the same time, they wanted to clear up the road right-of-ways to these properties. Strips were platted going down to the lake. They didn't plat roadways that were usable. Roads got built that went through everyone else's. They'd like to clear that up because they found [at the time of the economic crash], a lot of these high-end houses that were mortgaged went back to the lending institutions, who found out they didn't have legal roadways to them. They would like to work out a lot of problems that had been ignored. It would be hard because there was going to be a lot of people who had a different idea of how to do it. They were going to go ahead and tackle it and see where they got. There would be public hearings and so forth on it before they did it.

Bill said another solution to some of this was it showed a road through this person's property but didn't show a right-of-way for it. They might not have one. It might be possible to do some trades. They would look at every solution that they could. Dave said if they sold them, everyone would have the right to bid on them. They couldn't specifically say that they would sell to an adjacent owner. It would go to public auction. One person might buy a whole boulevard strip and tell everybody to stay off the land and tear down [encroaching building portions]. That would be pretty disruptive. They were trying to find something that could be workable with the people [who were adjacent]. They were trying to figure out a workable way for it to be okay with the public, since they had an interest so there had to be some compensation. The program

had to pay for itself. They couldn't rent these for less than it cost to establish the boundaries; they didn't have other moneys to put into a project like this. They weren't trying to balance the County money woes on these particular. It wasn't like that. Gale thought that 3 or 4 years ago, the Commissioner position was they weren't going to allow any building whatsoever on the boulevards. If that was the case, they wouldn't be looking at this proposal here today. They realized it was a problem [then] and thought it would eventually clear up over time. Bill said that was easier said than done. Dave said there were way too many encroachments already.

Gale confirmed with Tiffany that with the 11 conditions given, staff thought this variance could be approved.

Jack Nordberg was present to represent the McElwains. The last builder did quite a bit of stuff that he wasn't supposed to. They were trying to get things back on board so they could finish the project. Bill verified with Jack N that the McElwains were aware of the conditions. Jack N said they were now. They weren't at the start with the permitting with the other builder. Dave commented they'd been pretty good to work with. Jack said they would do what they needed to make the situation right.

Motion made by Bill Barron to approve the variance request, based on the stated conditions, terms and findings in the staff report.

Public comment:

Paula asked if Dean Farnham, an adjacent neighbor who submitted public comment (attachment #7), was present. He was not. Dave said most of the contiguous neighbors were like the applicants in that they didn't live there full-time. Bill noted this commenter didn't see that there was a point in making them change stuff.

Motion seconded by Diana Luke. Motion carried, all in favor.

TESS VARIANCES—KINGS POINT (3:21 pm)

Rob Edington introduced agent Jack Duffey, contractor Jeff Gallatin, owners Tiffany Schweitzer and John Tess, who introduced the Mahaffeys, who were next door neighbors. He handed out another map, since the lines hadn't copied [on the version in the staff report]. He presented the staff report. (See attachments to minutes in the January 2018 meeting file for staff report and handout.) He noted that the attachments showed the boulevard strip on the left of the property was approximately 100 feet wide. It was interesting why there would be such a wide strip. No concrete evidence was there as to why it was wider on this part of Kings Point. He referred to attachment #2. When Congress enacted the act to make these villas, they mandated that the lots were between 2 and 5 acres. One possible theory was if they extended the property lines to the shoreline, it would be over that acreage so they held the boundary 30 feet on one side and left the remainder on the other. Bill mentioned an area on the lake where the boulevard was 300 feet. Diana and Rob touched on the terrain. Dave added they platted in Washington, D.C. and they didn't know where the high water mark would end up after they built the dam. The dam wasn't built for 25 years. Rob concluded with attachment #3, describing some of the features, and attachment #8. One potential thought from staff was to rotate the structure and move it so the structure was actually on the property in the setback and just have the decks [in the villa strip].

When you looked at the elevations, there was actually structure under the decks so it was more than that. It was actually a 2-story structure.

Public comment:

John Tess said they came to answer questions that the Board might have, along with Jack Duffey and Jeff Gallatin. Norma Mahaffey was here as the property owner to the other side. In order to bring that portion of the property into conformance, they would do a lot line adjustment. They were trying to put a new house on where they had their A-frame now. Gale checked that the Mahaffeys were the neighbors to the north. Hadn't the neighbors to the south that would be affected by the 10-foot setback on the west commented? John T confirmed that they hadn't commented. [Tiffany S] said that [affected] the villa [rather than the neighbor].

Jack asked if condition #7 for the encroachment permit was temporary unless the leases were established. Dave said they hadn't had the public hearings yet or established the program [for the leases] so they couldn't have them sign anything. They were asking the applicants to waive the right that if the Commissioners came up with a reasonable solution, the applicants would agree to abide by it. Jack asked if the encroachment permits were an existing item where there had been public meetings. Bill said they could do an encroachment permit without a public meeting. When they were set to go through the lease process, public hearings would be held on that aspect. Dave said before they went through that, they'd talk to surveyors to come up with a good solid plan on how to allocate these strips fairly with the property owners. A lot of different scenarios could come up. They wanted to come up with good, decent things to tell people. They didn't want them to think the encroachment permit was forever and couldn't be changed. They would do the best they could to work it out with everybody.

Diana checked that as far as timing, the encroachment permit could be done in fairly short order in order to get a zoning conformance permit issued. Jacob said that would use the existing encroachment permit application that the County already had. Dave said it was similar but not as mean as the state leases. They might use part of the state lease language, which had been in effect for over 100 years in Montana for leasing those cabin sites. They would be fair to everybody as much as they could. They weren't out for anything for the County in particular. They couldn't ignore that it was public. They had to recognize that. They couldn't give it away.

Dick asked if the anticipated leases would be required for those who had no encroachment. Dave said if they wanted to use it exclusively, [they would need to lease it]. They would have first right. They could say to lease it to someone else. For instance, a kayak company could lease it for their tours. As far as a person who had a dock on it, all docks on public open navigable waters were legal for anybody to tie up to if the boat was in trouble. It was common law although not popular.

Bill asked if the level of the driveway came in at the level of the first floor. John T said yes. Bill described and showed that if the house was angled, it would put the deck right on the property line. He didn't have a problem going into the 10-foot setback with the deck. His concern was this wasn't a remodel or staying on the existing footprint. This was tearing down the old building and building a new one. He had a problem doing that in the boulevard. That was why they were in the situation they were in now and were trying to fix the problems. If the angle was

changed, he wouldn't have a problem with it. John T described some problems that arose with that, using the map. The access became very difficult. He indicated a small access that Norma had to her drainage field and a large stone retaining wall. The site was very hard to work with. They had actually pulled [the house] back from where it extended out into the boulevard.

Bill said they were still allowing a new nonconforming structure to be built. He thought this was contrary to what they were trying to fix. Paula asked Bill for clarification on his suggestion. Bill explained using the drawing along with some clarification from John T, who described that the two drainfields were right next to one another and took up a lot of space. The site was very constricted. Bill didn't see how that would interfere with tipping the house back. John T said it was the access to [Norma's] drainfield. The gravel driveway would be over his property, which was fine as long as they were neighbors. Norma added a new neighbor might not want it. Jack said you lost the parking and the safe access to the house, which was east of the existing structure if you pushed this house over and turned it east. He didn't know how they'd turn around or access the house. It came down fairly steep. The flat staging area was east of the house for vehicle turnaround. Bill said you wouldn't really affect the gravel driveway. Jeff described that it was steep down into it. There'd be no way to pull in or turn around if there was a fire. Dick commented that the entire Kings Point Road was not built for emergency vehicles. You wouldn't be able to design the driveways to turn around fire trucks. He thought for the last fire, a fire boat came over from Polson. There was no land access and no way to get emergency vehicles out there during that fire. Tiffany S said in this case they'd block it further. Dave mentioned on the west shore of Swan Lake, the fire trucks wouldn't come down the road because there was no safe way. You were on your own.

Gale said the existing cabin was nonconforming. Jack said more of the existing cabin was over the property line than not. It would be vice versa with the new structure. The majority would be on the lot itself. Dave reminded it was a particularly wide boulevard spot.

Rob referred to item b based on the findings of fact on pgs. 8-9, that no reasonable alternatives exist which [do] meet the standards contained herein. He'd considered Bill's idea when he started to write the report. It was a possibility. Based on the access to the side and the relationship to the shoreline, for which he referred to the 4th photo in attachment #6, it was possible to rotate the structure. It would be at more of an angle to the lake. [It would affect] the access and some of the vegetation in photo #1. Originally, that was the staff approach. The more they looked at [the applicant's plan], the more consideration they gave to allow it to be proposed. Ultimately it would be what the Planning and Zoning Commission determined.

Bill asked about the amount of drop from the top of the driveway. Jeff estimated 27 feet. John T thought it was more than that. He described the drop. Bill thought it looked like swinging the house back would help the problem rather than make it worse. He'd built some houses. This was their opportunity to fix a problem instead of making the same problem they were trying to fix. He would like to do a site visit. If he voted now, he'd vote against it. The Commissioners tried very hard to give people what they wanted but he couldn't tell why they should allow this from the information that he had.

Gale felt it was a factor that it would still be 100 feet from the lake and completely out of the lakeshore protection zone (LPZ). This was significantly different than they'd have on other properties. From that perspective, Bill asked where they would draw the line. If they were remodeling the old one and building on the same footprint, he could easily go along with this but they were tearing down the old one and building a new one. It might cost a little more to shift it back but it solved the problem so it wouldn't be a problem down the road. Dave gave a different take, with the unusual width of the boulevard strip. They were dealing with something that was relatively random where [the boulevard boundaries] were drawn. In this case, he didn't see their encroachment being as onerous as some of the others they'd seen. Bill checked if Dave was saying as long as they were outside the LPZ. Dave replied they were a long ways outside. Bill asked if they were going to start a precedence to allow people to build new structures in the boulevard. [Jeff Gallatin] thought the purpose of the lease and encroachment was to allow them to control that and build in that, realizing that they didn't own it but were paying the lease to control it.

Gale thought that was where they ran into the issue before. Not allowing people to build in the boulevard proved unworkable because every situation they looked at was different. Sticking hard and fast to that had created problems that they were trying to get away from through the lease idea. Bill didn't think that dealt with new houses. Jack said item b on pg. 8 addressed this and read from the item. He pointed to additional hardship for the applicants. It was addressed in the report.

Bill said he didn't have a problem with how the Board voted. He wanted to express his concern with it. They were trying to fix problems for Commissioners in the future. It wasn't his intent with the leases to build houses in the boulevard. He and Jack spoke further about this. Dick pointed to the judicial decision cited at the top of pg. 5 in the staff report. The house was on the boulevard and the property owner who purchased it knew that. Dave suggested polling the Board as to whether they would like to visit the site or vote on this now.

Jacob said they were dealing with 2 separate issues here. They had a good case for a variance, which was a totally separate issue from building on the boulevard. He thought they could approve the variance today either way. It would be in the setback either way. The other issue was tied to signing the encroachment permit. They could approve the variance today. If they weren't comfortable with signing the encroachment permit, they could do a site visit before they signed that.

Bill asked how soon they wanted to start construction. Tiffany S replied when the snow stopped. You couldn't drive into the driveway currently. John T said you could walk in, currently, from Norma's place. Tiffani M described that she parked on the road and walked down to do a site visit. You couldn't see all the way down from the road. You could see the roofline.

Jacob noted a condition required that the owners had to have an encroachment [permit] signed before they could get a zoning conformance. Bill said he didn't have a problem with the setback issue in the variance. He would like to look at the site. Diana agreed with Jacob that [the site visit] might be workable through the encroachment permit process and allow them to move forward to vote on the variance aspect. Gale said a site visit wouldn't help him; he wasn't a

builder. Diana noted that often the site visit, and seeing it on the ground, was the telling [point]. Dick said he was familiar with the site. Jacob reminded they would only be voting on the variance. Paula highlighted the encroachment permit was issued by the Commissioners.

Tiffany S. asked what the next step would be if they voted on the variance. Dave said if they were approved, it was the three Commissioners who would do a site visit and then they would or would not get permission to build in the boulevard strip. She asked how long that might take. Bill asked how soon there would be access. Jeff said it was weather-dependent. Plowing was touched on. Various attendees said the walk wasn't far if you went to Norma's, who shoveled a track for them. [Editor's reminder: Norma was present.] The attendees and Commissioners discussed going out on Friday. Bill said that would really help him.

Motion made by Bill Barron, and seconded by Paula Holle, to approve the variance request with the staff recommendation as written. (This included findings of fact, conditions of approval. It did not include permission to build on the villa site.) Motion carried, all in favor.

[Editor's note: The room became very noisy at this point.]

MINUTES – JULY 7, 2017 (4:05 pm)

Motion made by Paula Holle, and seconded by Diana Luke, to approve the minutes as presented. Motion carried, all in favor. Dave noted a misspelling. Lita could not hear the location over the noise in the room. Since the minutes were approved as written, she left this.

OTHER BUSINESS (4:06 pm)

Jacob asked about the chair. Lita thought they'd decided if the positions had been determined within a year, they would stand. Jacob checked with Dave/the Board and they agreed to keep it the same for another year.

Motion made by Paula Holle, and seconded by Dave Stipe, to adjourn. Motion carried, all in favor, at 4:06 pm.